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ABSTRACT

This paper provides additional guidance to states in the form of supplemental questions and answers to facilitate the development of policy for service delivery areas (SDAs) and other subrecipients of funding under the Job Training Partnership Act (JTPA) Amendments, which took effect on July 1, 1993. Topics covered are the following: definitions, relocation, Higher Education Act coordination--Pell Grants, on-the-job training, work experience, administrative standards, performance standards, monitoring and oversight, sanctions for violations of the JTPA, transition, state planning--Human Resource Investment Council, 8 percent state education and coordination and grants, older individuals, incentive grants funds, Private Industry Council certification, program design, eligibility determination, Title IIB summer youth programs, and Title III questions. (KC)

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DIRECTIVE : FIELD MEMORANDUM NO. 34-93, Change 1

TO: : ALL REGIONAL ADMINISTRATORS

FROM : BARBARA ANN FARMER
Administrator
for Regional Management

Barbara Ann Farmer

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: Guidance for Implementation of the Job Training Partnership Act (JTPA) Amendments of 1992; Questions and Answers

1. Purpose. To provide additional guidance to States in the form of supplemental Questions and Answers to facilitate their developing policy for Service Delivery Areas (SDAs) and other subrecipients as they establish systems in response to the JTPA Amendments, which take effect on July 1, 1993.

2. References. Field Memorandum (FM) No. 34-93, dated March 26, 1993

3. Background. The above-referenced Field Memorandum transmitted an initial 123 questions with preliminary answers on items raised in the State JTPA Liaison meeting on the 1992 amendments and the Interim Final Rule implementing the amendments. FM No. 34-93 indicates that the preliminary responses in the attachment to that document were being issued in advance of formal clearance by ETA and the Solicitor's Office. Those Q's & A's have subsequently been cleared and are reflected so in the automated system. One answer has been modified (Q. No. 24) and transmitted to all Regional Offices. Some questions have been raised concerning certain other answers, which are being reviewed to determine if additional guidance is warranted.

This Change 1, to FM 34-93 is being issued in recognition of the need to formally respond to many of the questions raised in the various Regional amendments training sessions. There is a huge backlog of such questions, which are being reviewed by the appropriate Offices and officials for approval and dissemination to the JTPA system. The attached Q's & A's have been

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culled from a number of the Regional sessions. They will also be entered into the automated Q & A system after this issuance. Additional Change documents to FM 34-93 will not be issued prior to the publication of the final JTPA regulations, nor do we expect that questions that have been entered into the automated system by the various Regional Offices will be addressed until development of the final regulations. Any modification to a response contained in the attached responses will be immediately transmitted to all Regional Offices.

4. Action. The Regional Offices should proceed to transmit the Q's & A's to the States, consistent with the direction contained herein.

5. Inquiries. Questions may be directed to Jim Aaron at (202) 219-6825 or Hugh Davies at (202) 219-5580.

6. Attachment.

Definitions

Q. Who decides when alcohol or substance abuse becomes a disability?

A. Alcoholism has always been a disability under Section 504 of the Rehabilitation Act. Someone using illegal drugs is not considered as having a disability--but, someone who is a recovering addict or who is currently participating in a rehabilitation program is considered to have a disability and is to be protected.

Q. Who makes the determination that an individual has an alcohol problem?

A. Determination of a disability is based upon any one of three methods: self-identification, having a record of alcohol abuse (individual is referred to JTPA from rehabilitation program, etc.), or individual is regarded by their intake worker, case manager, etc., as having the disability.

Q. In the definition of a "Family" the Act deals with a nuclear family, not the kinds of extended families that we encounter in our job training programs. Health and Human Services (HHS) recognizes extended family relationships (aunts, cousins, grandparents, etc.) in determining family income. Should income be treated the same for both HHS and JTPA?

A. No. For JTPA States/SDAs should use the more limited JTPA definition, found at Section 4(34) of the Act.

Q. How would a youth who lives with his/her grandparents be treated for the purposes of defining "family"? Would he/she be considered part of his/her nuclear family as defined at Section 4(34)(A), or as an individual in a "family unit of size one"?

A. In making a determination in such a case it would depend on how the youth came to be living with the grandparents, and whether the arrangement was temporary or permanent, voluntary or involuntary, or whether the grandparents were legal guardians or not. Section 626.5, Definitions, of the interim final rule provides that the Governor may provide interpretations on the term "family" to address situations such as these. The Department does not plan to provide further guidance on this matter.

Q. When does an applicant become a participant?

A. The term "Participant" is defined at Section 4(37) of the Act. In most instances under Title II, the definition will be met with the initiation of the objective assessment described at 20 CFR 628.515.

Relocation

Q. What will constitute adequate documentation from the employer that his/her move has not resulted in loss of jobs at the original location?

A. Self-certification and reasonable checking on the part of the SDA.

Higher Education Act Coordination -- Pell Grants

Q. Does the requirement that SDA contracts with Pell eligible institutions contain provisions on the amount and disposition of HEA title IV awards preclude such arrangements being made at the service provider level?

A. Local variations that provide for the required exchange of information at the service provider level may be appro- priate. If there are numbers of service providers, the SDA may wish to enter a single agreement.

On-the-Job Training (OJT)

Q. Can a person who does all the jobs from recruitment to placement, and all the jobs in between, be charged to direct training services?

A. Pursuant to the provisions at 20 CFR 627.440(e)(1), the title of a position does not necessarily indicate the cost category to which that person's salary will be charged. In the question's example, that portion of the person's time which benefits the "Direct training" cost category may be charged to "Direct Training."

Q. If an SDA uses the Job Service to develop OJT contracts, does Job Service become a broker?

A. Yes.

Q. Is an OJT broker a subrecipient?

A. Yes.

Q. If an OJT is written for youth, they must be given instruction in work maturity skills, general employment competencies, and occupational specific skills. Does this mean work maturity youth competencies? Can it be defined separately? What are general employment competencies?

A. Youth OJT should be approached from the standpoint of the policy concern which the Congress was seeking to address. The intent is that youth OJT provide training in higher skill jobs and that youth be prepared in other than the OJT experience itself for entering the labor market, however, the additional requirements do not have to be specifically tied to youth competency measures.

Q. The regulations at 20 CFR 627.240(g)(2), which deal with employer loss of eligibility for OJT contracts, is not as descriptive as the Preamble dealing with this topic on page 62009 of the regulations. Which should be followed?

A. The regulation has the force of law. The Preamble is only for illustrative purposes.

Q. Training materials seem to suggest that employers may be reimbursed for a maximum of 1040 hours under OJT. What is the statutory or regulatory basis for this limitation?

A. The 1040 hours figure was used for instructional purposes, to contrast what would be "normal" for maximum reimbursement to employers of 6 months, compared to the exception in excess of 6 months but for not more than 499 hours, pursuant to 20 CFR 627.240(b). There is no statutory or regulatory limitation of 1040 hours, only six months.

Q. If an OJT participant becomes ill and misses one month of their original six month OJT, can the contract be rewritten so that they can complete the entire six months of training (even if this six months of training now spans a seven month period of time.)

A. The statute, at Section 141(g), provides that the period of training "for a participant shall be limited in duration to a period not in excess of that generally required for acquisition of skills needed for the position within a particular occupation, but in no event shall exceed six months . . . ." In the example in the question, the participant would not be "in" training for the period of illness, and, therefore, the

OJT contract could be modified, if necessary, to reflect six months of actual training.

Q. Why all the restrictions on OJT with temporary employment agencies?

A. Because of the need to ensure that a real durable employer/employee relationship exists.

Q. If the normal work week is, for example, 45 hours per week, then the number of hours within the 6-month reimbursement period could be as many as, for example, 1160 hours, correct?

A. That is correct, assuming that the State policies and procedures on OJT would permit this.

Q. Will there be a definition and federal guidance in the area of "pattern of failure"?

A. No. The Governor will need to define this term in the context of the State's policy governing OJT activities.

Work Experience

Q. Work experience has to be combined with other activities. Why don't limited internships have to be combined with other training?

A. 20 CFR 628.804(i)(3) indicates that internships may be combined with other activities. Our general expectation for the individual service strategy (ISS) for any individual would take into consideration the combination of services which best responds to their employment needs.

Q. May a youth be enrolled in more than one work experience of 500 hours?

A. A youth may participate in work experience of a duration of greater than 500 hours. The requirement for work experience should be recorded in the ISS.

Administrative Standards

Q. What changes, if any, are being made or contemplated re cost allocation and in particular administrative cost pools (ACPs)?

A. The ACP language contained in the interim final rule was not intended to eliminate the use of "true cost pools" in accounting for the costs of JTPA programs. It was also not intended to go beyond the requirements of Section 108(a) of the Act, Generally Accepted Accounting Principles (GAAP), or similar provisions in OMB Circular A-87.

JTPA entities may continue to use administrative cost pools, indirect cost pools, training cost pools, intake cost pools, pools for supplies expense, and other comparable intermediate cost pools for the recording and temporary accumulation of joint or similar types of costs in which accumulated costs will be allocated back to the benefitting program(s) at a later date. The issue is how to distribute these costs back to the benefitting program.

For many JTPA entities, allocating administrative costs based on each program's share of total direct costs or total program costs compared to the total direct costs or total costs of all programs administered by an entity is an acceptable methodology. But, each organization is different and costs, particularly direct costs, are charged differently. Each entity will have to determine the best approach and may desire consultation with the State's or SDA's auditor. The Employment and Training Administration will accept treatments of pooled costs and allocation methodologies that are consistent with GAAP.

Q. Do Governors have to set the salaries for the SDA staff?

A. No. The Governor must establish allowable cost guidelines for the SDAs to use, which include compensation, but these guidelines should be general principles for compensation not specific salaries.

Q. For the purposes of within State reallocations under Section 109(a), who will determine the "highest rates of unemployment for an extended period of time" and the "highest poverty levels?".

A. The State will be responsible for determining these areas for reallocation purposes.

Q. Is a State Department of Commerce a Government entity?

A. Yes, according to OMB Circular A-128 (Government entity).

Q. In OMB Circular A-133 audits, there may be instances where there are no specific findings, but there are areas of improvement which an auditor may include in a management letter. Should the State get a copy of the subrecipient's management letter?

A. OMB Circular A-133 audits will report all findings. The State should seek a copy of the management letter even though it does not include any questioned costs.

Q. Can there be monetary findings as a result of State and Federal monitoring?

A. Yes. Allowable cost findings from monitoring should get the same treatment as such findings in audits. Non-cost monitoring findings do not require a formal Findings and Determination process unless normal interaction does not work.

Q. Will there be further clarification on carry-in of old JTPA funds on July 1, 1993, and impact on cost categories and cost limitations?

A. This area of cost limitation compliance is further clarified in the June 3, 1993 Federal Register notice (58 FR 31472) as follows:

> (3) In determining compliance with JTPA cost limitations for PY 1992 funds, Governors may either:
>
> • Determine cost limitation compliance separately for funds expended in accordance with paragraphs (g)(1) and (g)(2) of this section; or
>
> • Determine compliance for each cost category against the total PY 1992 funds, whether expended in accordance with the Act and regulations in effect prior to the 1992 amendments to JTPA or in accordance with the amended Act and these regulations. Using this option, the total combined funds for training and direct training costs should be

at least 65 percent of the PY 1992 SDA allocations.

Q. What are the State's responsibilities regarding the Governor's items of costs?

A. Section 627.435(i) of the interim final rule is consistent with the requirement that has existed since the beginning of JTPA in 1983 that "The Governor shall issue guidelines on allowable costs for. . . ."

Such guidelines should set parameters and guidance, rather than actual amounts. Our intent is to ensure that the Governor's guidelines address each of these items. We plan to change the language in the final rule by replacing the words "and amounts" with "or the extent of allowability".

For most States, the existing allowable cost guidelines of the Governor already meet the requirements of this paragraph and few if any changes are necessary. All States should review their current allowable cost guidelines and ensure that each of the listed items are treated as well as other cost items for which the Governor feels treatment is necessary. If a State has adopted the OMB Circulars on Cost Principles, all required items of cost would be covered. Note, however, that 1) we do not intend to approve or disapprove any prior approval requests, as required by the Circulars, and 2) the OMB Circulars contain restrictive requirements in areas in which States, SDAs, and SSGs may desire greater flexibility, e.g., staff compensation, fees/profits, fund-raising.

Q. What are the criteria for differentiating a vendor from a subrecipient?

A. A definition of both of these terms is set forth at 20 CFR 626.5 of the interim final rule.

Q. To what cost category should work experience payments be charged?

A. To the "Direct training" cost category.

Q. Under the selection of service provider provisions at Section 107, is the SDA required to prove that the education agency cannot provide the best service?

A. The education agency must be provided the opportunity to compete to provide the service. This means that they should be provided copies of RFP's, etc. Any proposals that are received from educational institutions are to be reviewed and rated in the same manner as proposals received from any other organizations.

Q. What is the basis for bringing services in-house?

A. Costs, efficiency, availability of providers, etc. Whether services are brought in-house, or are already being provided in-house, the State SDA or SSG must comply with the requirements of 20 CFR 627.422(c).

Q. What if a service provider lies on his debarment certification and auditor takes exception to the costs?

A. The service provider is liable for the disallowed costs. However, pursuant to 29 CFR 98.510(b), the SDA would be entitled to rely on the service provider's certification and would not be liable for the disallowances.

Q. Can the Service Delivery Area take a positive termination for a participant who gets hired on his/her own at a relocated company?

A. Yes

Q. If the Department, Office of Inspector General, or the Comptroller General conduct an audit must they provide a copy of the audit guide they are using for their audit?

A. Section 165(b)(3) of the Act requires that the entity to be audited receive advance notice of the overall objectives of the audit and any extensive recordkeeping or data requirements for the audit.

Q. Do some provisions of OMB Circular A-87 still apply, such as leasing property requirement?

A. The detailed requirements of OMB Circular A-87 have never applied to JTPA programs. If, however, a State has adopted OMB Circular A-87, in whole or in part, for

its JTPA programs this would be as State requirements and not as Federally imposed requirements.

Q. If a training provider requires uniforms or other items for training, are these direct training costs?

A. Yes.

Q. When can noncompetitive procurement be used to acquire goods and/or services?

A. Pursuant to 20 CFR 627.420(d)(4), noncompetitive procurement may be used only when it is infeasible to procure competitively and one of the six specified criteria are met. The intent of the Act and regulations is to ensure free and open competition.

Q. How are intra-title transfer of Title II-B funds to Title II-A shown on the financial reports?

A. For the 1993 summer program, the amount of obligational authority moved should be identified in the "remarks" section of the financial report. Thus, the reports will reflect the total amount all of the SDAs in a particular State wish to transfer for this year. In succeeding years, intra-title transfers will be reported as "Net transfers" on the new financial reporting instrument. (See also TEGL No. 6-92.)

Q. Does the State have the option of using OMB Circulars A-128 or A-133 to audit the State Higher Education Dept.

A. No. The Q's and A's for OMB Circular A-133, an official issuance of OMB, (questions 18/19, page 10) provides States a choice in audit coverage between A-128 (States) and A-133 (Higher Learning Institutions) for affiliated Institutions of Higher Learning. This option does not apply to State Departments of Education.

Q. Is it a vendor or a subrecipient? Scenario: a private vocational school; open to the general public; course cost is "catalog" based; impose same general entrance criteria that are for the general public including passing and ability to benefit test, e.g., high school diploma and 10th grade reading level, all of which is determined by the school; offer placement assistance to graduates of course at same level that they offer it to general public.

A. If there are no required placement criteria designed to further program objectives, and no entrance criteria specific to JTPA participants, e.g., provision of objective assessment included in the contractual agreement, the entity appears to be a vendor.

Q. Do the Act and regulations permit the State and SDAs to contract with school systems on a sole source basis?

A. Yes, provided that the provisions set forth at 20 CFR 627.420(d)(4) are met, and the Governor's procurement procedures so provide.

Performance Standards

Q. At what point, specifically, does a person count toward performance standards?

A. For Title II purposes, individuals who have: a) begun objective assessment and b) have begun participating in training or receiving job search assistance.

Q. What is the reason that Section 124 of the Act requires an identification of those additional performance standards requirements imposed by States and SDAs?

A. The purpose is to clearly differentiate requirements imposed by the Federal Government from those imposed by States and SDAs.

Q. Do performance standards apply to older workers?

A. Yes, but the standards have not yet been developed. There are no incentive funds attached to meeting or exceeding the standards, nor are there any sanctions for failure to meet the standards.

Monitoring and Oversight

Q. The State is required to monitor each SDA every year. Does this mean that every area must be monitored each year, or can the State plan to look at classroom training and OJT in one year and a different area the next?

A. The interim final rule at 20 CFR 627.475(b) provides that the Governor shall develop a monitoring plan for State monitoring which, among other things, ensures that SDAs and Title III substate grantees are monitored on site regularly, but not less than once annually. The specific areas to be covered, and the frequency of

review of local systems for the JTPA program, would be spelled out in the State's monitoring plan.

Sanctions for Violations of the Act

Q. Explain the differences between "waiver of liability" at §627.704, and "foregoing of debt collection" at §627.706?

A. There is no provision to waive any misexpenditure of a State level entity. For misexpenditures of an SDA, SSG, or other direct recipient of the State, a State may request a waiver of liability if it has met the four factors of Section 164(e)(2) of the Act and it can demonstrate that further debt collection efforts would be inappropriate or prove futile.

For misexpenditures below the SDA, SSG, direct State subrecipient level, the State may request approval to forego debt collection action against the SDA, SSG, or State subrecipient if that entity met the four factors of Section 164(e)(2) of the Act and it can demonstrate that further debt collection by the entity or by the State would be inappropriate or would prove futile.

All such decisions must be raised to ETA because the regulations specify that there can be no "release from liability" until such a determination is made by the ETA Grant Officer.

Transition

Q. Will States need to track separately the PY 1992 funds that are used under the old rules?

A. Yes.

Q. Would the new procurement requirements apply to a contract in place prior to July 1, 1993, which is being modified to reflect a new means of tracking administrative cost limitations?

A. Since the basis for the contract would not be changed, then the terms need not change. If participants enrolled into the program after July 1, 1993, are served by the contract, it may be necessary to modify the contract to bring it into compliance with all applicable requirements.

Q. Can the State determine if there is a need to recompete a procurement?

A. States should exercise caution in this area, and consult with procurement and legal staff prior to modifying contracts to determine if modifying an existing contract could result in a protest from vendors who had previously competed for the award.

Q. Under the provisions of § 627.904(a), how do unexpended three percent funds from Program Year (PY) 1992 become transformed to Title II-A five percent funds in PY 1993?

A. The principle would be similar to that for other transition provisions; that is, "old" money used for "old" purposes would be permitted for participants enrolled by June 30, 1993 and reported as previously, while "old" money used for "new" purposes would be subject to the requirements of other "new" provisions (§627.904(a)) and recorded pursuant to §627.904(h).

Q. The "Transition" TEGL No. 7-92 increases the cost limita-tion for administrative costs from 15 to 20 percent for Title II-A. Is this true for the setasides as well as for the 78 percent funds.

A. Yes, for those setaside funds where the 15 percent limitation for administration applies (e.g., the 80 percent of the 8-percent funds at Section 123(c)(2)(B) for services to participants).

<u>State Planning -- Human Resource Investment Council (HRIC)</u>

Q. What is being done at the federal level to work with the programs designated in the Act as potential HRIC participants? States are already approaching the State level agencies, but such agencies have heard nothing from their federal counterparts about the new amendment language.

A. All of the programs and Departments which are included on the HRIC were consulted during the development of the legislation. What has happened since the passage is the change in Administration and leadership in those agencies. As with the Department, new leadership is slow in getting on board, and as a result, working relationships on issues such as mutual support for the HRIC has not been initiated. ETA has been very actively involved with other organizations representing other HRIC programs, such as the National Association of State Councils on Vocational Education (SCOVEs). As

a result, all SCOVEs are fully informed about HRICs. Twenty States are committed to establishing HRICs or have done so already. Twenty others are deliberating on HRIC establishment.

Q. May the State legislate the formation of a Human Resource Investment Council (HRIC)?

A. Yes, although it may not be necessary. Some States are moving forward without action by the State legislature. Others feel that a permanent solution is desirable, so that things may not become undone with a new Governor. In some instances, legislation may not be sufficient to establish an HRIC. There are States where the Governor and chief educational official are both elected officials with comparable status, and the State legislative branch may not have the authority to compel action on the part of the State executive branch. The situation will differ based on the structure of governance in different States.

Q. How should the HRIC, if formed, be involved with "eight percent" education funds?

A. Since the education agency or agencies and State JTPA officials involved in developing agreements will all be represented on the HRIC, it may be a vehicle for publicly developing and ratifying such agreements. On the other hand, agencies and organizations which may not have direct responsibility for Section 123 programs may be brought into discussions unnecessarily; e.g., the State JOBS agency, or union representatives, may have only limited interest in the State's agreement on use of these funds. There would be a review and comment responsibility for the HRIC, since the agreement should be incorporated into the State's GCSSP.

8-Percent State Education Coordination and Grants

Q. Do barriers have to be documented for 8-percent projects?

A. All 8-percent participants have to be experiencing barriers to employment. Documentation for such barriers needs to be maintained. If an entire project is directed to dropouts, then the documentation could be done for the entire project, rather than for individual participants.

Q. Can work experience and limited internships be done under 8-percent? Do the same limits apply?

A. So long as the work experience and limited internships fit under the otherwise applicable regulatory requirements (e.g., §§ 627.245 and 628.804 would apply), they can be used.

Q. How do the "barriers to employment" provisions apply to programs under Section 123 State education coordination and grants?

A. Pursuant to Section 123(d)(2)(C), not less than 75 percent of the funds must be expended "for projects for economically disadvantaged individuals who experience barriers to employment." For persons who are not economically disadvantaged, priority is to be given "to Title III participants and persons with barriers to employment."

Barriers should be specified in agreements entered into between the Governor, State education agency or agencies, administrative entities, local education agencies, and other entities. Neither the Act nor the regulations go into further detail with regard to the barriers to employment that are to be applied; therefore, this is an area where the Governor may apply State interpretation. An interpretation that identified adult barriers at Section 203(b) of the Act, or youth barriers at Sections 263(b) and (d), would not be inconsistent with the provisions of the Act and regulations. "Add-a-barrier" provisions of Sections 203(d) and 263(e) would also not be inconsistent. Other barriers to employment not addressed in these sections of the Act would best be addressed through a State interpretation.

Q. May funds available under the Carl D. Perkins Act be used to satisfy the JTPA 8-percent matching requirement at Section 123(b)(2)(A)?

A. Yes, pursuant to the provisions set forth at Section 511 of the Carl D. Perkins Vocational and Applied Technology Educational Act, as amended.

Q. For Section 123 "projects" where 75 percent of funds must be used for participants who are economically disadvantaged -- are projects (for instance, schoolwide projects) permitted where all participants are not economically disadvantaged?

A. The requirement is that 75 percent of Section 123 funds must be expended for economically disadvantaged participants. Within this parameter, there could be projects exclusively for economically disadvantaged persons, projects exclusively for non-economically disadvantaged persons, and projects with a mix of both.

Q. The Act, in Section 123(a)(3) states that the federal share of the cost of projects described in 123(a)(2) shall be 50 percent. Section 123(a)(2) includes activities related to coordination of education and training, for which up to 20 percent of the funds may be spent. However, the regulations in 628.315(e) only require the Governor to guarantee matching funds for projects described in Section 123(b), which are projects conducted under cooperative agreements between the education agency and Service Delivery Areas. Must all coordination activities carried out with the 20 percent funds be matched?

A. Yes. A one hundred percent match is required since coordination is among the "projects" specified at Section 123(b).

Q. The Act and the regulations state that up to 20 percent of 8-percent funds may be used to facilitate coordination of education and training for participants in projects targeting literacy and lifelong learning opportunities, school-to-work transition services, and nontraditional employment for women. Is it acceptable to fund projects that promote educational coordination, such as research studies or statewide initiatives, but that do not directly benefit specific participants in those 8 percent funded projects?

A. Funding such projects is acceptable so long as their purpose is the coordination of education and training that will ultimately benefit JTPA participants.

<u>Older Individuals</u>

Q. How do the "barriers to employment" provisions apply to Section 204(d)(5) "five percent" program for services to older individuals?

A. Section 204(d)(5) provides that eligibility criteria for the older worker program are age 55 and older and economically disadvantaged; except that 10 percent of participants need not be economically disadvantaged if they face "serious barriers to employment" and meet

income eligibility requirements under Title V of the Older Americans Act of 1965.

Section 204(d)(6)(B)(i) identifies a number of provisions that are not applicable to the older worker program, including Section 203, "Eligibility for Services," which lists categories of hard-to-serve adults.

The Governor may interpret "serious barriers to employment" for Section 204(d) programs. A State interpretation that defines the term as adult barriers at Section 203(b) would clearly not be inconsistent with the Act and regulations. Other barriers would be best addressed through State interpretations.

Q. How will 5-percent Older Individual funds be allocated?

A. According to the regulations, allocation will be based on the older individual population within a Service Delivery Area (SDA) and the participation of such individuals in the labor force. It is not necessary for every SDA to receive 5-percent funds for Older Individuals.

Q. Are social security payments now required to be included in calculating income eligibility for older individuals for 5-percent services under Section 204(d) of the Act?

A. Yes. These payments are included because DHHS guidelines also include them; DOL is trying to achieve consistency.

<u>Incentive Grants Funds</u>

Q. How has the new capacity-building language changed requirements in this area? All efforts have been State-funded in the past; now they are to be co-funded by the State and SDAs?

A. Under the "old" Act and regulations, "six percent" funds could be used for technical assistance, including preventative technical assistance. "Technical assistance" was liberally defined to include staff training and development, which is largely what the new Amendments and regulations deal with in terms of "capacity building." (These terms are defined in the "new" regulations.)

Prior to the enactment of the Amendments, some States and SDAs did jointly fund what we would now term "capacity building." But in the majority of States, efforts were exclusively State-funded.

Capacity-building efforts need not be jointly funded by States and SDAs under the Amendments, although this is encouraged in the regulations. States may, but are not required to, use one-third of "five percent" funds under Section 202(c)(1)(B) for capacity-building purposes. The other two-thirds of the funds must be passed down to SDAs through incentive grants, and may be used by them for capacity-building purposes as well, and cost-sharing approaches involving the State and/or other Federal, State, and local human resource programs are encouraged but not required, pursuant to 20 CFR Section 628.325.

Q. May 6-percent funds be used for redesign of Management Information Systems (MIS) in PY 1992?

A. Yes. (For additional information on the use of 6-percent incentive funds for MIS redesign, see TEGL No. 2-92.)

Private Industry Council (PIC) Certification

Q. May the Governor certify the Private Industry Council (PIC) more than once every two years?

A. The Governor must certify the PIC every two years, and may certify it more often.

Q. Must the Governor issue procedures for PIC certification?

A. Yes, these procedures must be in the Governor's Coordination and Special Services Plan.

Q. The apparent versus actual conflict of interest provisions aren't clear; how do we protect against an "apparent" conflict of interest?

A. By design, PICs often include service providers. This is all right but they must excuse themselves from voting or influencing discussion on contracts that would benefit them and this should be documented. The final regulations are expected to clarify this matter.

Program Design

Q. May someone receiving food stamps be considered as fulfilling the barrier for targeting welfare recipients?

A. No. However, the SDA with the approval of the Governor may designate this as an additional "add-a-barrier" target group. Also, food stamp recipients are defined as eligible under the definition of "economically disadvantaged."

Q. May Title II eligible applicants receive supportive services?

A. Supportive services may be provided to eligible applicants. Such services provided to applicants should be for the purpose of allowing them to access the program - e.g., transportation and child care to get to and go through the intake process.

Q. What documentation is required to validate the 70 percent "hard-to-serve" minimum for a school-wide project? (JTPA Sec. 263(g)(1)(c)

A. Verification from the school that at least 70 percent of the students qualify as "hard-to-serve" is sufficient, as found at II-7 of the Title II Eligibility documentation TAG.

Q. What constitutes "appropriate circumstances" at Section 204(c)(1) which states that "[b]asic skills training provided under this part shall, <u>in appropriate circumstances</u>, have a workplace context and be integrated with occupational skills training?" (Emphasis added.)

A. A common sense reading of the law and regulations should be applied. "Appropriate circumstances," as used in Section 204(c)(1), would mean when the client's objective assessment and individual service strategy indicate that both basic and occupational skills training are necessary, and that combining the two is feasible and not a logistical problem.

Q. Under Section 203(c)(2)(A), the Act states that work experience, job search assistance, job search skills, and job club must be accompanied by "additional services" designed to increase the basic education or occupational skills of a participant. What constitutes "additional services"? Are additional services limited

to basic skills, job specific, or occupational skills or could it include the entire list of authorized services as described in Section 204(b)?

A. "Additional services" are only those that "increase the basic education or occupational skills of a participant." Several examples of additional services are listed in the regulations at Section 628.535(b)(2) and include classroom, pre-apprenticeship, and occupational skills training. Most of the activities described at Section 204(b)(1) could be defined as additional services and appropriately combined with job search assistance. However, activities such as assessment, case management, and counseling would not be considered additional services in accordance with Section 204(c)(2)(A) as they do not specifically increase educational or occupational skills.

Q. How do we define "previous assessment?" An SDA might open itself up to grievances regarding lack of validity/ consistency if you use more assessment tools some of the time. What is the liability associated with using other agency's assessments?

A. The objective here is to recognize that there are other assessments being developed for JTPA participants which need to be considered. The JOBS assessment is the easiest example. We do not want to create a duplicative and possibly conflicting assessment and service strategy for participants. Therefore, to the extent practicable, the JTPA program may use all or part of an assessment which satisfies any of the requirements of Section 628.515(b) of the regulations and is available from another source.

Q. A service delivery area might want participants to sign off on the ISS, but it doesn't want to open itself up to grievances. (e.g., you didn't provide everything in the ISS). What kind of a disclaimer will there be? (20 CFR 628.520(c))

A. The ISS should include a statement that the information included represents a general plan of services and training intended to result in employment or other appropriate outcome for the individual. It is not an entitlement to such services nor a contract between the program and the participant.

Q. Do the assessment and ISS requirements apply equally to the Title II-B program as they do for Titles II-A and II-C?

A. The Transition provisions of the Interim Final Rule, 20 CFR 627.904(k), require that the Calendar Year (CY) 1993 Title II-B program be operated under the JTPA regulations dated September 22, 1989. The assessment requirements of those regulations are found at 20 CFR 630.2.

For CY 1994 and future Title II-B programs the objective assessment and individual service strategy requirements as set forth in §§ 628.515(b)(2) and 628.520(b)(3) apply.

Q. Is SSI included or excluded from family income for eligibility purposes. (Section 626.5)

A. SSI is regarded as public assistance and is therefore excluded. This exclusion was inadvertently omitted from the interim final rule, but will be reflected in the final rule, when published.

Q. For schoolwide projects under Section 263(a), how often must the SDA comply with all of the criteria?

A. Since the school's status as a Chapter 1 school and the characteristics of the students may change from year to year, compliance should be for the school year.

Q. Are individual service strategies also required for individuals served under 8-percent education and 5-percent older individual funds?

A. Yes

Q. Under Titles II-B and II-C further clarification is needed for "incentive and bonus" payments. Are both required to be provided to participants?

A. The language in the regulations at 20 CFR 628.305(c) is "and/or" indicating that it can be either and does not need to be both.

Eligibility Determination

Q. Could documentation of tribal membership be used to document citizenship?

A. Yes.

Q. Items listed for eligibility for cash public assistance are for individuals listed on the grant. What is to be used if the individual is not listed on the grant? In

the past, for eligibility, the person did not have to be listed on the grant if they were part of the family.

A. This is still the case. That part of the definition of economically disadvantaged has not changed.

Q. Is ETA going to work out a release of information with the U.S. Department of Agriculture (USDA) concerning the free lunch program? Can SDAs use this criteria if schools refuse to share any information?

A. We are working on it. USDA officials have advised us that there are provisions in their Act and regulations which prohibit the overt identification of children eligible for free lunches. They advise that school officials may release summary information, such as the number eligible in a school. Information may also be released when a waiver form is signed by the parent. In this case, it is important that local JTPA officials work with school officials to have JTPA eligibility listed on the waiver form. We are contacting USDA officials to see if better arrangements can be set up, such as if the student indicates he is eligible for free lunch that the school would corroborate his or her status. We will also consider options if no information is forthcoming from the school.

Title II-B Summer Youth Programs

Q. Are wages allowed as compensation for academic enrichment programs under Title II-B?

A. Yes, as provided for at 20 CFR 627.305(f) of the interim final rule, summer participants may receive wages or wage equivalent payments for participation in activities under Title II-B.

TITLE III QUESTIONS

Q. Do the provisions of 20 CFR 628.535 pertaining to limitations on job search assistance apply to Title III?

A. No. The provisions at 20 CFR 628.535 apply only to Title II programs where objective assessment and individual service strategies are required. While not a statutory requirement for Title III, the need for basic occupational retraining and educational training should be considered in designing services for

participants. If, however, someone only needs job search assistance, it may be provided as a discrete basic readjustment service under Section 314(c) of the Act.

Q. Are there new reporting requirements for Title III discretionary projects?

A. Yes, there are new reporting requirements for Title III NRA Discretionary grants. The Dislocated Worker Special Project reporting form (ETA Form 9038) is currently at the Office of Management and Budget for clearance so that its use can be expanded to all discretionary grants by July 1, 1993.

Q. In the past, certification of an individual as a dislocated worker has been sufficient to establish the individual's eligibility for a Pell grant. Recently, however, some States or schools have no longer recognized this certification and have evaluated eligibility based on the individual's income, including for dislocated workers, earnings in the job from which they were dislocated. Consequently, many are now being considered ineligible for Pell. Is there a way to find them eligible?

A. This issue is being pursued with the Department of Education (DOE). However, in the meanwhile, if the State is more restrictive, then the State's requirements apply.

Q. Who determines what is a retraining activity in order to qualify for a UI work search exemption (i.e., UI or EDWAA)?

A. Section 314(f) of the Act provides that "[e]ach State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs within such State." That section further provides that "[a]n eligible dislocated worker participating in training (except for on-the-job training) shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of the Internal Revenue Code of 1986."

Q. When does a Title III applicant become a participant?

A. Unlike Title II, there is no objective assessment requirement in Title III. The term "participant" is defined at Section 4(37) of the Act. In most instances under Title III, the definition will be met with the

initiation of basic readjustment services (BRS) at Section 314(c) of the Act.

Q. What is early readjustment assistance under BRS and who provides it?

A. If the substate grantee under its resources provides rapid response-type assistance in situations where the State will not provide rapid response through its resources, then this is an example of early readjustment assistance. Under these circumstances, such assistance may be charged to BRS rather than to administration.

Q. Are there any changes to State EDWAA (Title III) plans needed?

A. No, unless the State changes policies which it would like to be reflected in the current State EDWAA plan document.